GEORGE S. MILES, SR.

IBLA 71-241 Decided September 29, 1972

Appeal from the decision of the Nevada land office, Bureau of Land Management, rejecting appellant's applications for a mineral lease or, alternatively, the restoration to mineral entry of land included in the first form of reclamation withdrawal (N-4998).

Affirmed.

Act of October 8, 1964 -- Mineral Lands: Leases -- Withdrawals and Reservations: Reclamation Withdrawals -- Withdrawals and Reservations: Revocation and Restoration

Where applications for a mineral lease pursuant to the Act of October 8, 1964, 16 U.S.C. § 460(n) (1970), and alternatively, for the restoration of a portion of the same land from the first form of reclamation withdrawal to mineral entry and location pursuant to the Act of April 23, 1932, 43 U.S.C. § 154 (1970), are both rejected on the basis of adverse recommendations by the Bureau of Reclamation, the decision will be affirmed where it appears that it was predicated upon a due regard for the public interest and constituted a proper exercise of discretionary authority.

APPEARANCES: George S. Miles, Sr., pro se.

OPINION BY MR. STUEBING

George S. Miles, Sr., has appealed from the decision dated February 24, 1971, by which the Nevada land office of the Bureau of Land Management rejected his application for a mineral lease covering the NE 1/4 of sec. 31, T. 22 S., R. 65 E., M.D. Mer., Nevada, and also denied Miles' alternative request that the first form of reclamation withdrawal which embraces the area be revoked and restored to mineral entry and location as to the S 1/2 SE 1/4 NE 1/4 of section 31.

The land office decision was based upon reports furnished by the Bureau of Reclamation, which recommended against favorable consideration of either application for the reasons that the land "lies within the area designated for the operation, protection and security of Hoover Dam." It stated that mineral development is

not in the public interest as it is necessary to maintain a reasonable buffer zone adjacent to Hoover Dam over which the United States retains complete jurisdiction. The report also expresses concern for the possible environmental alterations which might be anticipated, even under the most rigorous restrictions and supervision, in an area which attracted nearly 700,000 visitors in 1970. It notes that the National Park Service has designated the area immediately outside the buffer zone as a high density use area. This land is within the Lake Mead Recreation Area.

Appellant argues that he made a discovery of a valuable mineral deposit and located his claim in reliance upon the general mining law, and the regulations thereunder, and that he should have the benefit of that law. He contends that the deposit is a rich one, that it can produce a lot of work and a lot of money, and ought to be judged on its merits. It is asserted that the proceeds would be made available to assist young people in religious colleges, or to further missionary work.

Lands which are included in the first form of reclamation withdrawal cannot thereafter be entered, selected or located in any manner so long as they remain so withdrawn. 43 CFR 2322.1-1 (1972). Cf. M. G. Johnson, 79 I.D. 107 (1971). Therefore, applications to enter the withdrawn land must be rejected, regardless of the applicant's objections to the withdrawal. Juanice H. McCain et al., 4 IBLA 188 (1971). Mining claims located on land withdrawn from such entry are null and void ab initio and will not be validated by the modification of the order of withdrawal to open the land thereafter to mineral entry. David W. Harper et al., 74 I.D. 141 (1967). Accordingly, even if appellant's petition for restoration of the land to mineral entry were granted, he would have no prior right by virtue of the claim he had located previously.

An application under the Act of April 23, 1932, 41 Stat. 136, 43 U.S.C. § 154 (1970), for the restoration to mineral entry and location of reclamation lands will ordinarily be rejected when the Bureau of Reclamation has recommended against it, where the recommendation is premised upon the requirements of the public interest and where the reasons offered in support of the recommendation are cogent. Cf. Surprise Venture Associates, 7 IBLA 44 (1972). In this instance we find no reason to act contrary to the recommendation of the Bureau of Reclamation.

The decision to refrain from making this land available to mineral leasing pursuant to the Act of October 8, 1964, 78 Stat. 1039, 16 U.S.C. § 460(n) (1970), (see 43 CFR 3566.2) was premised upon the same considerations. A decision under these circumstances to reject, in the public interest, an application for a mineral

lease is within the discretionary authority of the authorized officer, and in the absence of any showing that the decision constituted an abuse of such discretion, the decision will be sustained. Mark Systems, Inc., 5 IBLA 257 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Edward W. Stuebing
Member

We concur:

Newton Frishberg
Chairman

Joan B. Thompson
Member